

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1486**

**Introduced by Assembly Member Dutra**

February 21, 2003

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*An act to add and repeal Chapter 1.5 (commencing with Section 10286) of Part 2 of Division 2 of the Public Contract Code, relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1486, as amended, Dutra. Public contracts: ~~alternate delivery methods~~ *design-build procurement process*.

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design-build basis.

~~This bill would state legislative findings and declarations that it is in the best interest of the state to construct state buildings in a cost-efficient manner, and that use of alternative delivery methods may help achieve this cost efficiency. This bill would also state the intent of the Legislature to enact legislation defining alternative delivery methods for the procurement of public works projects and establishing parameters for the use of alternative delivery methods.~~

*This bill would state the Legislature's intent to enable the Department of General Services to utilize safe and cost-effective options for building*

and modernizing state facilities through the use of the design-build procurement process.

This bill would authorize the Department of General Services, until January 1, 2008, to use a design-build procurement process for bidding on public projects, including a requirement that certain information be verified under oath. This bill, by requiring verification to be made under penalty of perjury, would create a new crime and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: ~~no~~—yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. (a) The Legislature finds and declares the~~  
2 *SECTION 1. Chapter 1.5 (commencing with Section 10286)*  
3 *is added to Part 2 of Division 2 of the Public Contract Code, to*  
4 *read:*

5  
6 *CHAPTER 1.5. DESIGN-BUILD CONTRACTS*  
7

8 *10286. (a) It is the intent of the Legislature to enable the*  
9 *Department of General Services to utilize safe and cost-effective*  
10 *options for building and modernizing state facilities. The*  
11 *Legislature has recognized the merits of the design-build*  
12 *procurement process in the past by authorizing its use for specified*  
13 *projects undertaken by the Department of General Services, K-12*  
14 *schools, and for specified local government projects.*

15 *(b) In addition, it is the intent of the Legislature that the full*  
16 *scope of design, construction, and equipment awarded to a*  
17 *design-build entity shall be authorized in a single funding phase.*  
18 *The funding phase may be authorized concurrently with, or*  
19 *separately from, the phase that authorizes the creation of the*  
20 *performance criteria and concept drawings.*

(c) *It is the intent of the Legislature that design-build procurement, as authorized by the act adding this chapter, may not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.*

10286.1. *As used in this chapter, the following terms have the following meanings:*

(a) *“Best value” means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life cycle costs, experience, and other criteria deemed appropriate by the department.*

(b) *“Design-build” means a procurement process in which both the design and construction of a project are procured from a single entity.*

(c) *“Design-build entity” means a corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.*

(d) *“Department” means the Department of General Services.*

(e) *“Project” means the erection, construction, alteration, painting, repair, or improvement of any state structure, building, or other state improvement of any kind.*

10286.3. *The Department of General Services, with the concurrence of the Department of Finance, if it is determined to be in the best interest of the state, may enter into a design-build contract for both the design and construction of a project.*

10287. *Bidding for design-build projects shall progress as follows:*

(a) (1) *The department shall prepare a request for proposal setting forth the scope of the project that may include, but need not be limited to, the size, type, and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans, or building layouts, or any other information deemed necessary to describe adequately the state’s needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state.*

(2) *Each request for proposal shall do all of the following:*

- 1 (A) Identify the basic scope and needs of the project or contract,  
2 the expected cost range, and other information deemed necessary  
3 by the department to inform interested parties of the contracting  
4 opportunity.
- 5 (B) Invite interested parties to submit competitive sealed  
6 proposals in the manner prescribed by the department.
- 7 (C) Include a section identifying and describing the following:
- 8 (i) All significant factors and subfactors that the department  
9 reasonably expects to consider in evaluating proposals, including  
10 cost or price and all nonprice related factors and subfactors.
- 11 (ii) The methodology and rating or weighting scheme that will  
12 be used by the department in evaluating competitive proposals and  
13 specify whether proposals will be rated according to numeric or  
14 qualitative values.
- 15 (iii) The relative importance or weight assigned to each of the  
16 factors identified in the request for proposal.
- 17 (iv) As an alternative to clause (iii), the department shall  
18 specifically disclose whether all evaluation factors, other than cost  
19 or price, when combined, are any of the following:
- 20 (I) Significantly more important than cost or price.  
21 (II) Approximately equal in importance to cost or price.  
22 (III) Significantly less important than cost or price.
- 23 (v) If the department wishes to reserve the right to hold  
24 discussions or negotiations with responsive bidders, it shall  
25 specify in the request for proposal and shall publish separately or  
26 incorporate into the request for proposal the applicable rules and  
27 procedures to be observed by the department to ensure that any  
28 discussions or negotiations are conducted in a fair and impartial  
29 manner.
- 30 (3) The department, in each design-build request for proposal,  
31 may identify categories of subcontractors, by subcontractor  
32 license classification, that will be listed by the design-build entity  
33 at the time of bid. In selecting subcontractors that will be listed by  
34 the design-build entity, the department shall limit the  
35 identification to only those license classifications deemed by the  
36 department to be essential for proper completion of the project.
- 37 (b) (1) The department shall establish a procedure to  
38 prequalify design-build entities using a standard form or  
39 questionnaire. This standard form or questionnaire shall require  
40 information including, but not limited to, all of the following:



1 (A) If the design-build entity is a partnership, limited  
2 partnership, or other association, a listing of all of the partners,  
3 general partners, or association members who will participate as  
4 subcontractors in the design-build contract, including, but not  
5 limited to, electrical and mechanical subcontractors.

6 (B) Evidence that the members of the design-build entity have  
7 completed, or demonstrated, the experience, competency,  
8 capability, and capacity to complete projects of similar size, scope,  
9 or complexity, and that proposed key personnel have sufficient  
10 experience and training to competently manage and complete the  
11 design and construction of the project.

12 (C) The licenses, registration, and credentials required to  
13 design and construct the project, including information on the  
14 revocation or suspension of any license, credential, or  
15 registration.

16 (D) Evidence that establishes that the design-build entity has  
17 the capacity to obtain all required payment and performance  
18 bonding, liability insurance, and errors and omissions insurance,  
19 as well as a financial statement that assures the department that  
20 the design-build entity has the capacity to complete the project.

21 (E) Any prior serious or willful violation of the California  
22 Occupational Safety and Health Act of 1973 (Part 1 (commencing  
23 with Section 6300) of Division 5 of the Labor Code) or the federal  
24 Occupational Safety and Health Act of 1970 (Public Law 91-596),  
25 settled against any member of the design-build entity, and  
26 information concerning a contractor member's workers'  
27 compensation experience history and worker safety program.

28 (F) Information concerning any debarment, disqualification,  
29 or removal from a federal, state, or local government public works  
30 project.

31 (G) Any instance where an entity, its owners, officers, or  
32 managing employees, submitted a bid on a public works project  
33 and were found by an awarding body not to be a responsible bidder.

34 (H) Any instance where the entity, its owner, officers, or  
35 managing employees defaulted on a construction contract.

36 (I) Any prior violations of the Contractors' State License Law  
37 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
38 Business and Professions Code), excluding alleged violations of  
39 federal or state law including the payment of wages, benefits,  
40 apprenticeship requirements, or personal income tax withholding,

1 *or of Federal Insurance Contribution Act (FICA) withholding*  
2 *requirements, settled against any member of the design-build*  
3 *entity.*

4 *(J) Information concerning the bankruptcy or receivership of*  
5 *any member of the entity, including information concerning any*  
6 *work completed by a surety.*

7 *(K) Information concerning all settled adverse claims,*  
8 *disputes, or lawsuits between the owner of a public works project*  
9 *and any member of the design-build entity during the five-year*  
10 *period preceding submission of the bid pursuant to this section, in*  
11 *which the claim, settlement, or judgment exceeds fifty thousand*  
12 *dollars (\$50,000). Information shall also be provided concerning*  
13 *any work completed by a surety during this period.*

14 *(L) In the case of a partnership or other association that is not*  
15 *a legal entity, a copy of the agreement creating the partnership or*  
16 *association.*

17 *(2) The information required pursuant to this subdivision shall*  
18 *be verified under oath by the design-build entity and its members*  
19 *in the manner in which civil pleadings in civil actions are verified.*  
20 *Information that is not a public record pursuant to the California*  
21 *Public Records Act (Chapter 3.5 (commencing with Section 6250)*  
22 *of Division 7 of Title 1 of the Government Code) may not be open*  
23 *to public inspection.*

24 *(c) The department shall establish a procedure for final*  
25 *selection of the design-build entity. Selection shall be based on*  
26 *either of the following criteria:*

27 *(1) A competitive bidding process resulting in lump-sum bids*  
28 *by the prequalified design-build entities. The award shall be made*  
29 *on the basis of the lowest responsible bid.*

30 *(2) Notwithstanding any provision of this code or the*  
31 *Government Code, the department may use a design-build*  
32 *competition based upon performance and other criteria set forth*  
33 *by the department in the solicitation of proposals. Criteria used in*  
34 *this evaluation of proposals may include, but need not be limited*  
35 *to, the proposed design approach, life cycle costs, project features,*  
36 *and project functions. However, competitive proposals shall be*  
37 *evaluated by using the criteria and source selection procedures*  
38 *specifically identified in the request for proposal. Once the*  
39 *evaluation is complete, all responsive bidders shall be ranked from*  
40 *the most advantageous to least advantageous to the department.*



1 (d) Any architectural or engineering firm or individual  
2 retained by the department to assist in the development criteria or  
3 preparation of the request for proposal is not eligible to participate  
4 in the competition with the design-build entity.

5 (e) The award of the contract, if not based on a lump-sum  
6 award to the lowest responsible bidder, shall be made to the  
7 responsible bidder whose proposal is determined, by the  
8 department to be the best value to the state.

9 (f) Proposals shall be evaluated and scored solely on the basis  
10 of the factors and source selection procedures identified in the  
11 request for proposal. However, the following minimum factors  
12 shall collectively represent at least 50 percent of the total weight  
13 or consideration given to all criteria factors: price, technical  
14 expertise, life cycle costs over 15 years or more, skilled labor force  
15 availability, and acceptable safety record.

16 (g) The decision supporting the department's contract award  
17 and the contract file must be sufficient to satisfy an external audit.

18 (h) Notwithstanding any provision of this code, upon issuance  
19 of a contract award, the department shall publicly announce its  
20 awards identifying the contractor to whom the award is made, and  
21 the contract price.

22 (i) For the purposes of this chapter, "skilled labor force  
23 availability" means that an agreement exists with a registered  
24 apprenticeship program, approved by the California  
25 Apprenticeship Council that has graduated apprentices in the  
26 preceding five years. This graduation requirement does not apply  
27 to programs providing apprenticeship training for any craft that  
28 has not been deemed by the Department of Labor and the  
29 Department of Industrial Relations to be an apprenticable craft in  
30 the two years prior to enactment of this act.

31 (j) For the purposes of this section, a bidder's "safety record"  
32 shall be deemed "acceptable" if its experience modification rate  
33 for the most recent three-year period is an average of 1.00 or less,  
34 and its average total recordable injury or illness rate and average  
35 lost work rate for the most recent three-year period does not exceed  
36 the applicable statistical standards for its business category, or if  
37 the bidder is a party to an alternative dispute resolution system as  
38 provided for in Section 3201.5 of the Labor Code.

39 10287.1. (a) Any design-build entity that is selected to design  
40 and build a project pursuant to this chapter shall possess or obtain

1 *sufficient bonding to cover the contract amount for nondesign*  
2 *services, and errors and omission insurance coverage sufficient to*  
3 *cover all design and architectural services provided in the*  
4 *contract. This chapter does not prohibit a general or engineering*  
5 *contractor from being designated the lead entity on a design-build*  
6 *entity for the purposes of purchasing necessary bonding to cover*  
7 *the activities of the design-build entity.*

8 *(b) Any payment or performance bond written for the purposes*  
9 *of this chapter shall use a bond form developed by the department.*

10 *(c) (1) All subcontracts that were not listed by the design-build*  
11 *entity in accordance with Section 10287 shall be awarded by the*  
12 *design-build entity.*

13 *(2) The design-build entity shall do all of the following:*

14 *(A) Provide public notice of the availability of work to be*  
15 *subcontracted.*

16 *(B) Provide a fixed date and time on which the subcontracted*  
17 *work will be awarded.*

18 *(3) Subcontractors bidding on contracts pursuant to this*  
19 *subdivision shall be afforded the protections contained in Chapter*  
20 *4 (commencing with Section 4100).*

21 *(4) In a contract between the design-build entity and a*  
22 *subcontractor, and in a contract between a subcontractor and any*  
23 *subcontractor thereunder, the percentage of the retention proceeds*  
24 *withheld may not exceed the percentage specified in the contract*  
25 *between the school district and the design-build entity. If the*  
26 *design-build entity provides written notice to any subcontractor*  
27 *who is not a member of the design-build entity, prior to or at the*  
28 *time the bid is requested, that a bond may be required and the*  
29 *subcontractor subsequently is unable or refuses to furnish a bond*  
30 *to the design-build entity, then the design-build entity may*  
31 *withhold retention proceeds in excess of the percentage specified*  
32 *in the contract between the department and the design-build entity*  
33 *from any payment made by the design-build entity to the*  
34 *subcontractor.*

35 *(5) In accordance with the provisions of applicable state law,*  
36 *the design-build entity may be permitted to substitute securities in*  
37 *lieu of the withholding from progress payments. Substitutions shall*  
38 *be made in accordance with Section 22300.*

39 *(d) The department shall establish and enforce a labor*  
40 *compliance program containing the requirements outlined in*



1 *Section 1771.5 of the Labor Code or shall contract with a*  
2 *third-party to operate a labor compliance program containing the*  
3 *requirements outlined in Section 1771.5 of the Labor Code. This*  
4 *requirement does not apply to projects where the school district or*  
5 *the design-build entity has entered into a collective bargaining*  
6 *agreement that binds all of the contractors performing work on the*  
7 *project.*

8 *10288. (a) The minimum performance criteria and design*  
9 *standards established pursuant to this chapter by the department*  
10 *for quality, durability, longevity, and life cycle costs, and other*  
11 *criteria deemed appropriate by the department shall be adhered to*  
12 *by the design-build entity. Any deviations from those standards*  
13 *may only be allowed by written consent of the department.*

14 *(b) The department shall be the employer of the inspector. The*  
15 *project inspector shall be fully independent from any member of*  
16 *the design-build entity and may not have any affiliation with any*  
17 *member of the design-build entity or any of the project*  
18 *subcontractors.*

19 *(c) The design-build entity shall be liable for building the*  
20 *facility to specifications set forth in the design-build contract in the*  
21 *absence of contractual language to the contrary.*

22 *10288.1. This chapter does not exempt design-build contracts*  
23 *from otherwise applicable provisions of this code unless the*  
24 *exemption is granted expressly, or by necessary implication.*

25 *10288.3. This chapter shall remain in effect only until*  
26 *January 1, 2008, and as of that date is repealed, unless a later*  
27 *enacted statute, that is enacted before January 1, 2008, deletes or*  
28 *extends that date.*

29 *SEC. 2. No reimbursement is required by this act pursuant to*  
30 *Section 6 of Article XIII B of the California Constitution because*  
31 *the only costs that may be incurred by a local agency or school*  
32 *district will be incurred because this act creates a new crime or*  
33 *infraction, eliminates a crime or infraction, or changes the penalty*  
34 *for a crime or infraction, within the meaning of Section 17556 of*  
35 *the Government Code, or changes the definition of a crime within*  
36 *the meaning of Section 6 of Article XIII B of the California*  
37 *Constitution.*

38 ~~*following:*~~

39 ~~*(1) It is in the best interest of the state to construct state offices*~~  
40 ~~*and other facilities in a cost-efficient manner that represents the*~~

1 ~~best overall value to the taxpayers and offers the greatest benefit~~  
2 ~~to the state's economy. To accomplish this goal, state agencies~~  
3 ~~need to be able to use the best possible project delivery methods.~~  
4 ~~(2) Alternative delivery methods present an attractive,~~  
5 ~~cost-effective contracting option to state agencies, especially in~~  
6 ~~comparison to the three-step design-bid-build process.~~  
7 ~~(b) It is the intent of the Legislature to enact legislation that~~  
8 ~~would define alternative delivery methods for the procurement of~~  
9 ~~public works projects and establish parameters for the use of~~  
10 ~~alternative delivery methods in public works projects.~~

